It is to be noted that this section does not specifically say that the common law right of a workman to an action for damages in respect of an injury suffered by him is automatically extinguished if he applies to the Commissioner for compensation under the Act. What it does say is that a workman shall not maintain an action for damages if an application for compensation has been made by him to the Commissioner.

Under the Act the worker, unlike the employer, is not obliged to inform the Commissioner of the accident, nor is he obliged to apply to the Commissioner for compensation in respect of it. The act of applying for compensation is purely a voluntary one on the workman's part.

Compensation under the Act becomes payable to the workman by the employer if injury is occasioned to him in the course of and arising out of his employment. The workman does not have to show negligence on the part of the employer whose liability to the workman for the accident is absolute. Under the common law not only must injury to himself be proved by the workman but also that such injury was caused to him by the negligence of his employer. It was never the intention of the Legislature to deprive a workman of his common law rights against his employer. What the Act does do is to give him rights against his employer which he did not have under the common law.

If a workman suffers an accident through the negligence of his employer there arises by virtue of the common law a cause of action in tort for damages in negligence against the employer. This cause of action immediately vests in the workman and he has a common law right to bring proceedings in the appropriate court. This right continues in the workman until such time as he may be debarred from doing so by the law of limitation.

Under section 33(1)(a) what has perhaps been debarred to the workman is his right to bring a common law action for damages and this debarrment continues so long as there is an application by the workman before the Commissioner of Labour for compensation. But this debarrment in no way affects the cause of action already vested in him. As soon as the application for compensation is withdrawn, and be it noted such withdrawal is not forbidden by the Act, the right to maintain an action revives and the workman may then proceed with his action for damages in the appropriate court. The situation here is, to my mind, analogous to section 4(1) of the Criminal Evidence Act 1898 (61 & 62 Vict c. 36) which runs as follows:

"The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged."

This was held by the House of Lords in *Leach* v. *Rex*[1] to make a wife a competent witness against her husband and not of making her compellable. "The principle" said Lord Atkinson at 311 "that a wife is not to be compelled to give evidence against her husband is deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite, and positive enactment, not by an ambiguous one such as the section relied upon in this case."

This scheme of the Act, in my view, is not to abrogate a workman's common law cause of action but to enable him, if he so desires, to get a speedy remedy for the injury suffered by him. But in so enabling him the Act sees to it that he does not get a double benefit, that is to say, both compensation under the Act and damages under the common law for the one injury (section 18 of the Act). Under section 33(2) of the Act a workman's right to compensation, in my view, lies dormant while he pursues his common law action but should he lose the action he may choose to ask the court to assess compensation under the Act.

In the absence of the Act expressly declaring that an application to the Commissioner for compensation under the provisions of the Act *ipso facto* abrogates a workman's common law rights for damages, I am of the view that a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any court.

In the instant case no Order for compensation has been made by the Commissioner. Had there been such an Order made one might then, perhaps, have reasonably argued that the Order operates to merge all other rights of action in respect of the injury in it, more so in view of the provisions of section 28 of the Act which enacts:

"28. Where an order has been made by the Commissioner under section 25 it shall be enforced by a District Court in the same manner as a judgment of that court and all necessary processes may be served by the court on behalf of the Commissioner:
Provided that no sale of immovable property shall for the purposes of such enforcement be ordered except by the High Court."

The accident took place on May 23, 1981, the alleged application for compensation was made on July 7, 1981, the so-called application was withdrawn by the Plaintiff on January 12, 1982 and the Commissioner notified the Plaintiff's solicitors on January 29, 1982 that "since your client Zahrin bin Rabu wishes to claim damages under the common law in respect of the above accident, please note that this office will take no further action on the matter." (Exhibit D2). In my opinion the action may now proceed and be maintained by the Plaintiff.

Order accordingly.

Solicitors: *P.T. Seah & Co.; Murphy & Dunbar.*

IN THE ESTATE OF PANG SOO HO, DECD.

[O.C.J. (Chua J.) May 27, 1982]
[Singapore – Probate No. 125 of 1981]

Family Law – Chinese Christian man marrying under the Christian Marriage Ordinance, 1940 – Whether disqualified so long as that marriage subsists from entering into a polygamous marriage with another woman – Christian Marriage Ordinance (Cap. 37 of the 1955 Revised Edition) – Women's Charter 1961 – Women's Charter (Cap. 47).

Probate and Administration – Deceased died intestate – Petition for letters of administration by lawful children and widow – Caveat by 2nd and 3rd wives and their issues.

In this case the deceased a Chinese Christian domiciled in Singapore in his lifetime married Madam Tan Loo Teck on June 30, 1942 under the Christian Marriage Ordinance, 1940. Later in 1952 he went through a wedding ceremony according to Chinese customary rites with Madam Lim Pab Hup and still later in 1957 he

lived with and acknowledged Madam Chia Lee Peng as his wife. An application for letters of administration was made by two of the children of the deceased and Madam Tan Loo Teck as the lawful widow. Caveats were entered by Madam Chia Lee Peng and her child and by Madam Lim Pab Hup and her children. The question was whether a locally domiciled person of Chinese race who has contracted a marriage under the provisions of the Christian Marriage Ordinance, 1940, is thereby disqualified so long as that marriage subsists from entering into a polygamous marriage with another woman.

Held: (1) a male Chinese Christian who chooses to have his marriage solemnised in accordance with the provisions of the Christian Marriage Ordinance is incapable during the continuance of such marriage of contracting a valid marriage with any third person whether as principal or secondary wife;

(2) in this case therefore the deceased was incapable of taking Madam Lim Pab Hup and Madam Chia Lee Peng as secondary wives;

(3) section 93(2) of the Women's Charter does not include a Chinese customary marriage and is not applicable to the children of Madam Lim Pab Hub and Madam Chia Lee Peng. They are therefore not entitled to share in the estate of the deceased.

Cases referred to:

(1) *Chin Teck Leong & Four Others* v. *Estate and Trust Agencies (1927) Ltd.*, [1939] M.L.J. 118.
(2) *Re Henry Lee Fow Lee* [1953] M.L.J. 106.
(3) *Re Loh Toh Met decd.* [1961] M.L.J. 234.
(4) *Re Ding Do Ca decd.* [1966] 2 M.L.J. 220.
(5) *Choo Eng Choon, Choo Ang Chee* v. *Neo Chan Neo & Others* 12 S.S.L.R. 120.
(6) *Cheang Thye Phin* v. *Tan Ah Loy* [1920] A.C. 369.
(7) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257.
(8) *Re Estate of Liu Sinn Min decd.* [1974] 2 M.L.J. 9; [1975] 1 M.L.J. 145.

PROBATE.

Joseph Ang (*Miss Wong Mei Sean* with him) for the applicants.

Liu Yuen Ming for the caveators, Pang Chee Chiang and Pang Chee Lip.

Eugene Wan for caveators Chia Lee Peng and Pang Hwee Min.

Cur. Adv. Vult.

Chua J.: Pang Fei Ling and Pang Hwee Giok petitioned for Letters of Administration of the Estate of Pang Soo Ho, Deceased (the deceased) who died intestate on August 18, 1981, domiciled in Singapore. In their petition they set out that they are two of the lawful children of the deceased and that Madam Tan Loo Teck is the lawful widow.

A caveat was entered by Madam Chia Lee Peng and Pang Hwee Min on October 21, 1981. They claimed to be the third wife and issue respectively of the deceased. A caveat was entered by Madam Lim Pab Hup, Peng Chee Chiang, Peng Chee Lip and Peng Chee Seng on November 13, 1981. Madam Lim Pab Hup claimed to be the second wife of the deceased and the other three to be the issues of the deceased.

The Petition was referred to a Judge and the matter came before me. It is agreed by all the parties that the first issue for the decision of the court is whether the deceased, who was married to Madam Tan Loo Teck on June 30, 1942, at the Holy Trinity Church, Horne Road, Singapore, was capable of taking subsequent secondary wives by Chinese customary rites.

It is not disputed that the deceased was domiciled in Singapore and that he was a Christian during his lifetime and that he married Madam Tan Loo Teck (also a Christian) on June 30, 1942, at the Holy Trinity Church and that the marriage was under the Christian Marriage Ordinance, 1940.

Madam Lim Pab Hup, in her affidavit, said that she came to know the deceased in 1950; that she conceived a child by the deceased and Peng Chee Chiang was born on December 11, 1952; and that she and the deceased went through a wedding ceremony according to Chinese customary rites on July 12, 1952 in Singapore; that Peng Chee Lip was born on February 9, 1954 and that she and the deceased separated in 1965 but the deceased continued to pay maintenance for the children until January 31, 1975.

Madam Chia Lee Peng, in her affidavit, said that she first met the deceased in 1953; that their relationship continued and grew; that by 1955 the deceased and she acknowledged each other as husband and wife; that by 1957 the deceased acknowledged her as his wife when they were in the company of his friends although she was not introduced to his parents until 1958; and that she bore the deceased a child, Pang Hwee Min, who was born on January 1, 1963.

In the Straits Settlements all the previous Acts relating to the solemnisation of Christian marriages were repealed and replaced by the Christian Marriage Ordinance of 1898 which became Cap. 82 in the 1936 Edition of the Laws of the Straits Settlements. The Christian Marriage Ordinance, Cap. 82, was repealed and replaced with effect from January 1, 1941 by the Civil Marriage Ordinance, 1940, and by the Christian Marriage Ordinance, 1940. In 1955 the Civil Marriage Ordinance, 1940, was replaced by the Civil Marriage Ordinance, Cap. 38, in the 1955 Edition of the Laws of the Colony of Singapore. The Christian Marriage Ordinance, 1940, was amended and new sections added between 1941 and 1952 and replaced by the Christian Marriage Ordinance, Cap. 37, in the 1955 Edition of The Laws of the Colony of Singapore. The Christian Marriage Ordinance, Cap. 37 and the Civil Marriage Ordinance, Cap. 38, were repealed and replaced by the Wormen's Charter, 1961 (No. 18 of 1961). The Women's Charter, 1961, was amended from time to time and was replaced by the Women's Charter, Cap. 47, in the 1970 Revised Edition of The Statutes of the Republic of Singapore.

The Civil Marriage Ordinance enables persons, other than Muslims, to have their marriage solemnised before Registrars of Marriages (who are not required to be Christians) and contains provisions which make it very clear that marriages celebrated under it are monogamous.

It is the contention of the petitioners that the marriage of the deceased to Madam Tan Loo Teck under the provisions of the Christian Marriage Ordinance, 1940, was a monogamous marriage and that the deceased was incapable during the continuance of such marriage from entering into a polygamous marriage with another woman whether as principal or secondary wife.

On the other hand, the contention of the caveators is that a male Chinese, before the coming into force of the Women's Charter, was by his personal law permitted to have a plurality of wives and consequently the deceased even though he was a Christian and already married to

Madam Tan Loo Teck under the Christian Marriage Ordinance, 1940, was capable of contracting a valid marriage with Madam Lim Pab Hup and Madam Chia Lee Peng as secondary wives.

So the question in the present case is whether a locally-domiciled person of Chinese race who has contracted a marriage under the provisions of the Christian Marriage Ordinance, 1940, is thereby disqualified so long as that marriage exists from entering into a polygamous marriage with another woman. The question is not a simple one. Counsel for the petitioners and counsel for the caveators inform me that there is no Singapore case on this point, but I have found two cases – *Chia Teck Leong & Four Others* v. *Estate & Trust Agencies (1927) Ltd.*[1]; *Re Henry Lee Fow Lee, Decd.*[2] Counsel for the caveators rely on two Malaysian cases – *Re Loh Toh Met, Decd.*[3]; *Re Ding Do Ca, Decd.*[4].

In *Chia Teck Leong & Four Others* v. *Estate & Trust Agencies (1927) Ltd.*, the plaintiffs were brothers and they were the sons of Chia Keng Chiang and Blanche Richards and they alleged that Blanche Richards was the secondary wife of Chia Keng Chiang who died in 1908. Blanche Richards was a Eurasian who had been baptised into the Roman Catholic faith but thereafter had made no profession of the Christian faith. The plaintiffs claimed as beneficiaries under the will of a Chia Ann Siang, the father of Chia Keng Chiang, for the administration of his estate. They claimed to be lawful sons of Chia Keng Chiang by Blanche Richards and as such entitled to share in the testator's estate under the trusts of his will. The defence denied that Blanche Richards was a lawful secondary wife and also set up the provisions of the Indian Marriage Act, 1865, and the Christian Marriage Ordinance, Cap. 82, and contended that there could be no valid marriage between a Chinese and a Christian except in accordance with those statutory provisions. Horne, J. held that the evidence established that Blanche Richards was a lawful secondary wife of Chia Keng Chiang and that the provisions of the Indian Marriage Act, 1865, did not invalidate the union. The learned Judge was of the view that the Indian Marriage Act, 1865, and the Christian Marriage Ordinance, Cap. 82, only apply to marriages in the Christian or monogamous sense and not to Chinese marriages in the Straits Settlements where polygamy among the Chinese was recognised.

In *Re Henry Lee Fow Lee, Decd.*, the deceased, born in British North Borneo but domiciled in Singapore, died in Singapore in March 1952, intestate. The deceased was a Christian and sometime in 1935 he entered into a form of marriage valid by Chinese custom to Madam Annie Tan. Subsequent to the marriage Madam Annie Tan discovered that the deceased was a Christian and professed the Catholic faith. On his death the deceased was interred at the instance of Madam Annie Tan in Bidadari Cemetery according to Catholic rites. Sometime before his death, the deceased executed a Will wherein he described Madam Annie Tan as his legal wife. The Will was, however, not witnessed and had therefore to be disregarded for Probate purposes. Madam Annie Tan petitioned by way of Originating Motion for an Order: (a) that she might be regarded as the lawful widow of the deceased and (b) that as such she might be authorised to petition for Grant of Letters of Administration. It was held that the deceased being a Christian could only contract a marriage within the meaning of section 3 of the Christian Marriage Ordinance, 1940, which he had not done as regards the purported marriage with Madam Annie Tan and therefore the marriage was invalid. Murray-Aynsley, C.J. in the course of his very short judgment said: "The words of the section (section 3) are 'every such marriage solemnized otherwise than as provided in this section shall be invalid.' I regard the wording as quite plain and unambiguous. But for the case of *Chia Teck Leong & Four Ors.* v. *Estate & Trust Agencies (1927) Ltd.*, I should not have considered it necessary to give a written judgment. I do so merely to put on record my disagreement with the decision on this point in that case." His Lordship gave no reasons for his opinion. Thomson, C.J. in *Re Loh Toh Met, Decd.*, differed from the view of Murray-Aynsley, C.J.

In *Re Loh Toh Met, Decd.*, the case concerned the distribution of the estate of one Loh Toh Met who died in Johore Bahru on July 21, 1958. The deceased was survived by three women whom he married in accordance with Chinese custom – one in Singapore in 1932, one in Johore in 1940 and one in Johore sometime between 1953 and his death. The deceased died intestate domiciled in Johore. The trial Judge held that the deceased was a person professing the Christian religion and that as he had not married the women in accordance with the provisions of the Christian Marriage Ordinance of the Straits Settlements and of the Christian Marriage Enactment of Johore, each of the three purported marriages was void. The children and the three widows appealed. The Court of Appeal, Federation of Malaya, held that for the purposes of the Distribution Enactment Chinese polygamous marriages were lawful, that a Chinese domiciled in the Federation of Malaya could contract such a marriage irrespective of whether or not he professed the Christian religion and that the children of such marriage were legitimate and that even if a Chinese was a Christian he could choose whether to contract a monogamous marriage or a polygamous marriage.

In *Re Ding Do Ca Decd.*, the deceased had in 1923 married one Madam Wong under the Christian Marriage Enactment in Perak and subsequently in 1937 he went through a form of marriage according to Chinese custom with Madam Ngoi. Sometime before he went through the second marriage he embraced Buddhism. The deceased died intestate in 1949 domiciled in Perak. After his death Madam Wong applied for and obtained letters of administration to his estate. Subsequently in 1962 Madam Ngoi and her children commenced an action against Madam Wong and sought declarations that she was the widow of the deceased and that her children were his lawful children and that as such they were entitled to share in the estate of the deceased as beneficiaries. The trial Judge, (Ali J.) took the view that the law relating to the question before him was not very well settled, that there was authority for the proposition that the personal law of the deceased permitted him a plurality of wives, and that the existence of a prior marriage which was, at least in its inception, monogamous did not incapacitate the deceased from contracting a subsequent polygamous marriage. In any event at sometime

before the second marriage the deceased had ceased to be a Christian and had embraced Buddhism and this removed any obstacle there might be in the way of coming to the conclusion that Madam Ngoi was a lawful widow. Ali, J. gave judgment in favour of Madam Ngoi and her children. Against that decision Madam Wong appealed. The Federal Court of Malaysia held: (1) in regard to persons of the Chinese race the courts had given judicial recognition to certain customs which had been imputed to such persons and under such customs Chinese could contract a polygamous marriage; (2) there was nothing in the Christian Marriage Enactment which rendered a party who was married under it incapable during its continuance of contracting a polygamous marriage and therefore in this case the deceased could contract a valid marriage with Madam Ngoi despite his earlier marriage with Madam Wong under the Christian Marriage Enactment. Thomson, L.P. in his judgment expressed the view that the fact that the deceased had prior to his death ceased to be a Christian and became a Buddhist had no bearing whatsoever on questions relating to his personal law as a Chinese derived his personal law from his race irrespective of what his religion might be. The appeal was dismissed.

It is settled law in this country that the personal law of the Chinese permitted him a plurality of wives, (See *Choo Eng Choon, Choo Ang Chee* v. *Neo Chan Neo & Ors.*[5] (the historical *'Six widows' case*); *Cheang Thye Phin* v. *Tan Ah Loy*[6]. The next question that has to be answered in this case is whether the fact that the deceased was a Christian during his lifetime operated in any way so as to alter his personal law or so as to render void his Chinese customary marriages with Madam Lim Pab Hup and Madam Chia Lee Peng, by reason of anything contained in the relevant statute relating to Christian marriages. To put it shortly the real question at issue is the effect of the Christian Marriage Ordinance where persons of Chinese race were married under it. The relevant statute in this case is the Christian Marriage Ordinance, 1940, replaced by the Christian Marriage Ordinance, Cap. 37.

In *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi*[7] (a Federation of Malaya case), Thomson J. considered the Straits Settlements Christian Marriage Ordinance, 1940, and came to the view that although the Christian Marriage Ordinance, 1940, did not expressly provide that a marriage under it was monogamous, it was a law enabling the parties to enter into a marriage which they contemplated or intended should be monogamous.

It is submitted by counsel for the petitioners, that the Christian Marriage Ordinance, Cap. 37, has altered the personal law of the deceased.

It is necessary to compare the Christian Marriage Ordinance, Cap. 82, with the Christian Marriage Ordinance, Cap. 37.

The title of the Ordinance, Cap. 82, states that it is "to consolidate the law relating to Christian marriages". The Ordinance contains elaborate provisions for the solemnisation of marriages by Christian clergymen and by Marriage Registrars who were required to be Christians. Section 3 provides that "every marriage between persons, one or both of whom is or are a Christian or Christians" which is solemnised otherwise than in accordance with the provisions of the Ordinance "shall be void".

In *Re Loh Toh Met's case*, Thomson C.J. considered the Christian Marriage Ordinance, 1940, of the Straits Settlements and he said (at p. 245):

> "Again it is to be observed that, although the Ordinance (Cap. 82) purports to deal with Christian marriages, the marriages of which it regulates the solemnisation are not confined in terms to marriages between persons who are Christians . . . . . it is clear that there is nothing whatsoever in the Ordinance to prevent two atheists or two Jews having their marriages solemnised under it by a Registrar.
>
> Again it is to be observed that from beginning to end there is not a word in the Ordinance which relates to what may be called the substantive law of marriage. There is not a word in it which relates to capacity. If an enquirer wishes to know, for example, what are the prohibited degrees of consanguinity or what is the minimum age for marriage he must look for the answer elsewhere. The only criminal sanction for bigamy, the essence of which in this country is the contracting of a marriage which is void by reason of the existence of a previous marriage, is to be found not in the Ordinance but in the Penal Code. Indeed the Ordinance disclaims in gremio any intention that it should affect the substantive law for section 71 says that nothing in it is to be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into."

The title of the Ordinance, Cap. 37, states that it is "to provide for the solemnisation of Christian Marriages by ministers of religion and for the registration of such marriages". It is to be observed that in this Ordinance there is a criminal sanction for bigamy (section 42) and there are provisions which relate to the substantive law of marriage. There is provision for the avoidance of marriage where either party is under the age of sixteen years (section 4). There is also provision of what are the prohibited degrees of consanguinity whereby parties are forbidden to enter into a marriage (section 5).

The Ordinance, Cap. 37, is primarily confined in terms to marriages between Christians and between persons one of whom is a Christian.

The Ordinance, Cap. 82, also did not contain any provision corresponding to sections 6 and 20(a) of the Ordinance, Cap. 37. Section 6 provides for the avoidance of marriages where there is a subsisting prior marriage under any law, religion, custom or usage to any other person. Section 20 provides that, before the issue of the certificate for marriage by the minister, one of the persons intending marriage has to appear personally before the minister and make certain solemn declarations. One such declaration is that neither of the parties is married under any law, religion, custom or usage to any other person. (Section 20(a)).

Section 71 of the Ordinance, Cap. 82, specifically preserved the personal law applicable to the parties to the marriage. It is of importance to note that the Ordinance, Cap. 37, does not contain any provision corresponding to section 71 of the earlier Ordinance saving the personal law applicable to the parties.

Comparing the two Ordinances Cap. 82 and Cap. 37 the two are substantially different.

It seems to me that when the Christian Marriage Ordinance, Cap. 82, was repealed and replaced by the Christian Marriage Ordinance, 1940, and the Civil Marriage Ordinance, 1940, the intention of the Legislature was that the marriage under the Christian Marriage Ordinance, 1940, was to have the same status as the marriage under the Civil Marriage Ordinance, 1940, in that both marriages are monogamous marriages except that the Civil Marriage

Ordinance was to provide for a civil and non-religious marriage. Any other intention would spell an injustice for the two individuals, who intended their marriage to be a monogamous union contracted under the Christian Marriage Ordinance, to be deprived of that effect just because of their faith that they did not choose to undergo a marriage under the Civil Marriage Ordinance. In fact as between the two ordinances the concept of monogamy is more compelling under a Christian marriage than a non-religious one. It is true, as pointed out by counsel for the caveators, that there is an absence of an equivalent section 4 of the Civil Marriage Ordinance in the Christian Marriage Ordinance which provides that "a male person married in accordance with the provisions of this Ordinance, shall be incapable, during the continuance of such marriage, of contracting a valid marriage with any third person, whether as principal or secondary wife". It seems to me that it is unnecessary to have a similar provision in the Christian Marriage Ordinance as it is clear that a marriage under it is monogamous and the Legislature has provided for the same effect as section 4 by enacting section 6, section 20(a) and section 42.

A Chinese Christian is given a choice either to marry under the Christian Marriage Ordinance or the Civil Marriage Ordinance. It is inconceivable that the Legislature intended that a Chinese Christian who chooses to marry under the Christian Marriage Ordinance should be capable of taking a secondary wife under his custom whereas if he chooses to marry under the Civil Marriage Ordinance he is not capable.

I am, therefore, of the view that a male Chinese Christian who chooses to have his marriage solemnised in accordance with the provisions of the Christian Marriage Ordinance is incapable during the continuance of such marriage of contracting a valid marriage with any third person whether as principal or secondary wife.

The position before the coming into force of the Women's Charter, as I see it, was that a male Chinese Christian could marry under the Christian Marriage Ordinance, Cap. 37, or the Civil Marriage Ordinance, Cap. 38, or under his custom. The choice was his. If he chose to marry under the Christian Marriage Ordinance then he had lost or abandoned his right to take a secondary wife under his personal law. If he chose to marry under the Civil Marriage Ordinance then he was incapable, by section 4, of contracting a valid marriage with any third person, whether as principal or secondary wife. Of course if he chose to marry under his custom then he could have a plurality of wives.

In the result I find that the deceased was incapable of taking Madam Lim Pab Hup and Madam Chia Lee Peng as secondary wives.

Counsel for the caveators argue that even if the court finds that the deceased was incapable of taking a secondary wife nevertheless the children of Madam Lim Pab Hup and Madam Chia Lee Peng are legitimate children of the deceased by virtue of section 93(2) of the Women's Charter, Cap. 47, (now section 99(2) of the Reprint of the Women's Charter) and entitled to share in the estate of the deceased.

Section 93(2) before it was deleted and substituted by Act No. 8 of 1975 reads:

"The child of a void marriage, whether born before or after the commencement of this Act, shall be deemed to be the legitimate child of his parents".

The new section 93(2) came into force on May 2, 1975, and reads:

"93(2) The child of a void marriage born on or after the date of the commencement of the Women's Charter (Amendment) Act, 1975 shall be deemed to be the legitimate child of his parents if at the date of such void marriage both or either of the parties reasonably believed that the marriage was valid."

The contention of counsel for the caveators is that the alleged marriages of the deceased with Madam Lip Pab Hup and Madam Chia Lee Peng are void marriages.

The decision in *Re Estate of Liu Sinn Min, Decd.*,[8] is against that contention. In that case the deceased had married one Madam Ho under the Civil Marriage Ordinance, 1940. Subsequently he contracted a union with Madam Chia and had three children by her. After his death Madam Ho applied for letters of administration. A caveat was lodged by Madam Chia claiming that her three children were the lawful children of the deceased and were entitled to a share in his estate. Madam Ho and her children thereupon commenced proceedings for the determination of the question whether the defendants, the children of Madam Chia, were entitled to inherit in the estate of the deceased. It was held (Choor Singh J): (1) the deceased had by contracting a statutory marriage in 1941 divested himself of his right to take a *t'sip;* (2) "marriage" in the expression "void marriage" in sub-section (2) of section 93 of the Women's Charter does not include the concept of a Chinese secondary marriage; (3) the defendants in this case were not the children of a void marriage within the meaning of section 93(2) of the Women's Charter and they were therefore not entitled to share in the estate of the deceased. The defendants appealed. The Court of Appeal ((1975) 1 M.L.J. 145) held, dismissing the appeal: (1) "marriage" in the expression "void marriage" in section 93(2) of the Women's Charter does not include a Chinese secondary marriage and (2) the learned trial Judge was correct in holding that the children were not children of a "void marriage" and therefore they were not entitled to share in the estate of the deceased.

In any case section 93(2) is not applicable to the children of Madam Lim Pab Hup and Madam Chia Lee Peng.

I, therefore, hold that the children of Madam Lim Pab Hup and Madam Chia Lee Peng are not entitled to share in the estate of the deceased.

Order accordingly.

Solicitors: *Lee & Lee; Lim, Ganesh & Liu; Loo & Loo.*